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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,053	06/07/2001	Kimberly Patrick Farrow	7099-1461	6053
826	7590	02/23/2006	EXAMINER ROSEN, NICHOLAS D	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			ART UNIT 3625	PAPER NUMBER

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/875,053

Applicant(s)

FARROW ET AL.

Examiner

Nicholas D. Rosen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1-12 have been examined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6

Claims 1, 2, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott ("THE MEDIA BUSINESS: ADVERTISING; on the Web by Time and Saatchi Offers a Way to Change On-Line Banners Instantly") in view of the anonymous article, "OneMinuteShopper.com Signs Partners for 100% Affiliate-Based Syndicated Selling System; New Network Set to Offer Extraordinary Deals to Affiliates and Consumers,"

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hereinafter "OneMinuteShopper," the anonymous article, "(IPG) Mediaplex Forms Partnership with Communications Giant Interpublic," hereinafter "Mediaplex," and official notice. As per claim 1, Elliott discloses, in a network comprised of a client device and at least two server devices, a method for providing real-time price information, the method comprising: receiving at a first server device from the client device, a request for content, wherein the content is contained in an associate's web site that includes an offering made by a seller, wherein the first server maintains the associate's web site, and wherein an associate is an entity other than the seller; and substantially continuously providing the client device updates to variable data of the offering referenced in the associate's web site, wherein the variable data of the offering is subject to update by a second server (first two paragraphs; paragraph beginning "Here is how N.O.W. is meant to work"; and final paragraph). Elliott is not explicit about the servers, but official notice is taken that it is well known for web sites to be hosted on servers, and accessed from client devices such as home computers, making a first server to host "the Internet search engine Yahoo" or another Web site, and a client device to enable a potential customer to view the content of the Web site, obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention, for the obvious advantage of enabling the particulars disclosed by Elliott to function. Likewise, it is held to have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for "the Internet search engine Yahoo" or another Web site to provide the requested content, since a web site which did

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not provide requested content would soon lack visitors, and be a poor place for a banner ad.

Elliott does not disclose receiving an indication to complete a purchase of the offering of the seller directly at the associate's web site based on input from the client device, but "OneMinuteShopper" teaches enabling customers to complete a purchase of the offering of a seller directly at an associate's web site, presumably based on input from the customer's client device (paragraph beginning, "Unlike first wave eCommerce operations,"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to receive an indication to complete a purchase of the offering of the seller directly at the associate's web site based on input from the client device, for the stated advantages of offering greater value to the associate and being more convenient for the consumer.

Elliott does not expressly disclose that the variable data of the offering is subject to update by the second server in response to a change in the variable data detected by the second server, but "Mediaplex" teaches updating banner ads in response to a change in variable data detected by the appropriate banner ad server, and publishing updated data in the banner ads, and therefore to the client devices of consumers seeing those banner ads (paragraphs beginning "Mediaplex's proprietary MOJO" and "Updating MOJO's capabilities"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to update banner ads in response to a server's detection of a change in variable data, for the

stated advantages of helping marketers connect with customers, deliver relevant promotions, and generate higher returns on their advertising investments.

As per claim 2, Elliott does not expressly disclose determining by at least one of the client device and the first server whether the content refers to variable data that is subject to modification by the second server, but it is held that the interaction between the first and second server if the content is updated, as disclosed by Elliott, would obviously involve the first server (and the client, if the client device displays, e.g., changing numbers) in determining whether the content includes or refers to variable data, e.g., a banner ad containing changing headlines or limited-time offers.

As per claim 5, Elliott does not expressly disclose providing, by the second server, an interface with a purchasing service, but it is well known for Web advertisers to provide such interfaces, as taught, for example, by "OneMinuteShopper" (paragraph beginning "Unlike first wave eCommerce operations"). Hence, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have the second server do so, for the obvious advantage of profiting from "alerting consumers to limited-time or time-sensitive offers like sales, rebates, coupons and 'bogus' (buy one, get one free)," to quote Elliott, and enabling "consumers to complete impulse buying transactions," to quote "OneMinuteShopper."

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott, "OneMinuteShopper," "Mediaplex," and official notice as applied to claim 1 above, and further in view of Clenaghan et al. (U.S. Patent Application Publication 2002/0052816). Elliott does not disclose transmitting executable code from the first server to the client

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device, wherein the executable code executing on the client device periodically establishes a communication link with the second server to receive any updates to variable data referenced in the content, but Clenaghan teaches a Java applet periodically querying a server for updated information (paragraph 0008), and official notice is taken that it is well known for Java applets to comprise executable code transmitted from servers to client devices. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to transmit executable code from the first server to the client device, wherein the executable code executing on the client device periodically established a communication link with the second server to receive any updates to variable data referenced in the content, for the obvious advantage of arranging for updated information to be available to the user.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott, "OneMinuteShopper," "Mediaplex," and official notice as applied to claim 1 above, and further in view of Cole et al. (U.S. Patent 6,074,434). Elliott does not disclose transmitting executable code from the first server to the client device, wherein the executable code executing on the client device comprises: code detecting conditions associated with the client device that indicate a need for updates to the variable data; and code generating the updates to the variable data based on the detected conditions associated with the client device. However, Cole teaches transmitting executable code from a server to a client device, wherein the executable code executing on the client device comprises: code detecting conditions associated with the client device that

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indicate a need for updates to the variable data; and code generating the updates to the variable data based on the detected conditions associated with the client device (Abstract; column 6, lines 5-41; column 7, lines 8-19). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to transmit executable code from the first server to the client device, wherein the executable code executing on the client device comprises: code detecting conditions associated with the client device that indicate a need for updates to the variable data; and code generating the updates to the variable data based on the detected conditions associated with the client device, for the obvious advantage of making the information on which the user of a client may rely current and valid.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott, "OneMinuteShopper," "Mediaplex," and official notice as applied to claim 1 above, and further in view of Senna "Generator 2." Elliott does not disclose narrowcasting at least a portion of the variable data, but Senna teaches targeting content toward specific users, as well as updating banner ads (paragraph beginning "This is particularly useful"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to narrowcast at least a portion of the variable data, and provide variable data that had been narrowcasted, for the obvious advantage of providing targeted information, e.g., advertising targeted to particular users or subsets of users based on their probability of buying the advertised goods and/or services, as determined from prior purchases, demographic information, etc.

Claims 7-10

Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott ("THE MEDIA BUSINESS: ADVERTISING; on the Web by Time and Saatchi Offers a Way to Change On-Line Banners Instantly") in view of the anonymous article, "OneMinuteShopper.com Signs Partners for 100% Affiliate-Based Syndicated Selling System; New Network Set to Offer Extraordinary Deals to Affiliates and Consumers," hereinafter "OneMinuteShopper," the anonymous article, "(IPG) Mediaplex Forms Partnership with Communications Giant Interpublic," hereinafter "Mediaplex," and official notice. As per claim 7, Elliott discloses, in a network comprised of a client device and at least two server devices, a method for providing real-time price information, the method comprising: receiving at a first server device from the client device, a request for content, wherein the content is contained in an associate's web site that includes an offering made by a seller, wherein the first server maintains the associate's web site, and wherein an associate is an entity other than the seller; providing, by the second server, variable data of the offering; and substantially continuously providing the client device updates to variable data of the offering referenced in the associate's web site, wherein the variable data of the offering is subject to update by a second server (first two paragraphs; paragraph beginning "Here is how N.O.W. is meant to work"; and final paragraph). Elliott is not explicit about the servers, but official notice is taken that it is well known for web sites to be hosted on servers, and accessed from client devices such as home computers, making a first server to host "the Internet search engine Yahoo" or another Web site, and a client device to enable a potential customer to view the content of the Web site, obvious to one of ordinary skill in the art of electronic

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commerce at the time of applicant's invention, for the obvious advantage of enabling the particulars disclosed by Elliott to function. Likewise, it is held to have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for "the Internet search engine Yahoo" or another Web site to provide the requested content, since a web site which did not provide requested content would soon lack visitors, and be a poor place for a banner ad.

Elliott does not disclose receiving an indication to complete a purchase of the offering of the seller directly at the associate's web site based on input from the client device, but "OneMinuteShopper" teaches enabling customers to complete a purchase of the offering of a seller directly at an associate's web site, presumably based on input from the customer's client device (paragraph beginning, "Unlike first wave eCommerce operations,"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to receive an indication to complete a purchase of the offering of the seller directly at the associate's web site based on input from the client device, for the stated advantages of offering greater value to the associate and being more convenient for the consumer.

Elliott does not expressly disclose that the variable data of the offering is subject to update by the second server in response to a change in the variable data detected by the second server, but "Mediaplex" teaches updating banner ads in response to a change in variable data detected by the appropriate banner ad server, and publishing updated data in the banner ads, and therefore to the client devices of consumers seeing those banner ads (paragraphs beginning "Mediaplex's proprietary MOJO" and

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"Updating MOJO's capabilities"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to update banner ads in response to a server's detection of a change in variable data, for the stated advantages of helping marketers connect with customers, deliver relevant promotions, and generate higher returns on their advertising investments.

As per claim 9, Elliott does not expressly disclose providing, by the second server, an interface with a purchasing service, but it is well known for Web advertisers to provide such interfaces, as taught, for example, by "OneMinuteShopper" (paragraph beginning "Unlike first wave eCommerce operations"). Hence, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have the second server do so, for the obvious advantage of profiting from "alerting consumers to limited-time or time-sensitive offers like sales, rebates, coupons and 'bogus' (buy one, get one free)," to quote Elliott, and enabling "consumers to complete impulse buying transactions," to quote "OneMinuteShopper."

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott, "OneMinuteShopper," "Mediaplex," and official notice as applied to claim 7 above, and further in view of Clenaghan et al. (U.S. Patent Application Publication 2002/0052816). Elliott does not disclose transmitting executable code from the second server to the client device, wherein the executable code executing on the client device periodically establishes a communication link with the second server to receive any updates to variable data referenced in the content, but Clenaghan teaches a Java applet periodically querying a server for updated information (paragraph 0008), and official

notice is taken that it is well known for Java applets to comprise executable code transmitted from servers to client devices. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to transmit executable code from the second server to the client device, wherein the executable code executing on the client device periodically established a communication link with the second server to receive any updates to variable data referenced in the content, for the obvious advantage of arranging for updated information to be available to the user.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott, "OneMinuteShopper," "Mediaplex," and official notice as applied to claim 7 above, and further in view of Senna "Generator 2." Elliott does not disclose narrowcasting at least a portion of the variable data, but Senna teaches targeting content toward specific users, as well as updating banner ads (paragraph beginning "This is particularly useful). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to narrowcast at least a portion of the variable data, and provide variable data that had been narrowcasted, for the obvious advantage of providing targeted information, e.g., advertising targeted to particular users or subsets of users based on their probability of buying the advertised goods and/or services, as determined from prior purchases, demographic information, etc.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott and official notice as applied to claim 7 above, and further in view of the article "Inc. (NYSE: IPG), One of the World's Largest Organizations of Advertising." Elliot discloses

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publishing updated variable data for a second server to at least one of a client device and a first server (first two paragraphs; paragraph beginning “Here is how N.O.W. is meant to work”; and final paragraph). Elliott does not expressly disclose detecting with the second server when a change in variable data has occurred. (This could quite reasonably be viewed as inherent from “the ability to instantly change the headlines and text of banner ads,” “real-time sports scores,” etc., but to avoid argument over whether this could be met by a person inputting changed variable data into the second server, and whether there is a significant distinction between detecting with a server when a change has occurred, and detecting with the server that someone has entered changed instructions based on detecting a change by a person rather than the server, Examiner does not rely on inherency.) However, “Inc.” teaches updating banner ads when certain sales goals are achieved or inventory reaches a specified level, based on a real-time connection to business information (see entire article, especially the paragraph beginning “Illustrating MOJO’s capabilities”). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant’s invention to detect with the second server when a change in variable data has occurred, for the obvious advantage of readily updating time-sensitive offers, sports scores, or other changing information.

Claim 11

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of “OneMinuteShopper,” “Mediaplex,” and official notice. Claim 11 is essentially parallel to claim 1, and rejected on much the same grounds. Elliott does not expressly

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disclose a computer-readable medium containing instructions for causing a data processing system to perform the method of claim 1, but does disclose a method involving web sites, which inherently involve computers. Official notice is taken that computer-readable media containing instructions for controlling data processing systems are well known; hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to use such a medium, for the obvious advantage of instructing a data processing system to perform the indicated steps.

Claim 12

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of "OneMinuteShopper," "Mediaplex," and official notice. Claim 12 is essentially parallel to claim 7, and rejected on much the same grounds. Elliott does not expressly disclose a computer-readable medium containing instructions for causing a data processing system to perform the method of claim 7, but does disclose a method involving web sites, which inherently involve computers. Official notice is taken that computer-readable media containing instructions for controlling data processing systems are well known; hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to use such a medium, for the obvious advantage of instructing a data processing system to perform the indicated steps.

Response to Arguments

Applicants' arguments filed December 22, 2005 have been fully considered but they are not persuasive, and are further mooted by the new references applied in view of applicant's amendments. Applicants argue that neither Elliott nor the "Inc." article explicitly discloses how the data is updated; in particular, neither Elliott nor "Inc." discloses that the variable data of the offering is subject to update in response to a change in the variable data detected by the second server, a limitation which Applicants' independent claims have now been amended to recite. That is true, but the "Mediaplex" article teaches integrating online marketing initiatives, including banner ads, with back-end business data, including such variable data as inventory information.

Applicants also argue that the independent claims have been amended to recite purchasing the offering of the seller directly via the associate's web site (in fact, the language is now "directly at the associate's web site). Examiner agrees that this does distinguish over Elliott, but other prior art, notably the "OneMinuteShopper" article, teaches purchasing an offering from an affiliate's web site without having to visit the seller's web site. Thus, Examiner has met Applicants' request to provide one or more references in support of the proposition that completing a purchase directly at an associate's web site is known.

The other common knowledge or well-known in the art statements in the previous office action are taken to be admitted prior art, because Applicant did not traverse Examiner's taking of official notice.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Grdina (U.S. Patent 6,965,872) discloses systems and methods for facilitating the sale of commodity-like goods and services, and in particular teaches updating prices and refreshing prices viewed at web sites (Figure 7; column 9, lines 45-56; column 14, lines 35-42; column 15, lines 6-10). Nowers et al. (U.S. Patent Application Publication 2003/0033205) disclose a method and system for facilitating fulfillment of electronic commercial transactions, and in particular disclose that a customer may stay on an affiliate's electronic storefront to have a purchase processed by a branded retailer (paragraph 17).

Tadger ("Make Your Web Site Mean Business") discloses changing banner ads easily to publicize a new product or a price cut (second last paragraph). The anonymous article, "VIGNETTE: Vignette and Vitessa Form Partnership to Eenable [sic] Next Generation of E-Business Commerce Apps," discloses providing merchants with the ability to distribute "Buy It" buttons anywhere on the Internet. The anonymous article, "SalesLogix Selects End-to-End E-Business Solution from Vitessa Corporation and Vignette Corporation to Power Interact.com," further discloses these "Buy Now" buttons. Mara ("Mercata Showcases Rich-Media Ads on MSN") discloses banner ads in which featured products, prices, etc., can be updated.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen, whose telephone number is 571-272-6762. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins, can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Non-official/draft communications can be faxed to the examiner at 571-27-6762.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nicholas D. Rosen
NICHOLAS D. ROSEN
PRIMARY EXAMINER

February 20, 2006